



**TOWN OF HARPSWELL
PLANNING BOARD MINUTES
February 18, 2009
DRAFT**

MEMBERS PRESENT

Joanne Rogers, Chair
John Papacosma, Vice Chair
Robin Brooks, Secretary
Debora Levensailor, Associate

MEMBERS ABSENT

Roberta Floccher
Dorothy Carrier

STAFF PRESENT

Carol Tukey, Town Planner
Melissa Moretti, Recording Secretary

The Town of Harpswell Planning Board meeting, being duly advertised in the Brunswick *Times Record*, was called to order at 6:50 PM by Joanne Rogers, Chair. Introductions were made of Board members, and the Pledge of Allegiance was recited.

The Chair read the Agenda and explained the hearing process and procedures for Planning Board meetings. She then made Ms. Levensailor a full voting member for the meeting.

CONSIDERATION OF MINUTES

The Chair asked for a motion to accept the Minutes of January 21, 2009 as printed; it was seconded. Mr. Papacosma made the Board aware of an incorrect description on page 4 – “CPI” actually stood for Consumer Price Index. The Board unanimously accepted the Minutes, with correction.

SITE VISIT

A site visit was previously held at the property of Donald & Marie Toussaint, as well as the Community Drive location in Harpswell.

OLD BUSINESS

There was no old business to discuss.

NEW BUSINESS

08-12-01 Donald & Marie Toussaint (Owners), Robin Edgecomb (Applicant), Reconstruction of Non-Conforming Structure, Tax Map 45 Lot 92, 39 Guss Gully Road, Harpswell.

The Applicant, Robin Edgecomb, addressed the Board on behalf of Mr. and Mrs. Toussaint. She confirmed that the Board had visited the site, and said that the issue was before the Board because there was a request for a foundation to be placed under the camp that had not been there. She explained that the building(s) on the property had not been occupied for several seasons; they were unsafe, and would be razed. Regarding the septic system, she said that the new building had been designed with a two bedroom system, as is currently the case. The building would also be constructed with the same footprint. The Town Planner confirmed that the building could be reconstructed for non-conforming use under § 10.4.2 of the Ordinance, and the Code Enforcement Officer had approved it.

The Chair asked for more questions from the Board; there were none. She then asked for comments from the audience; there were no comments.

Mr. Papacosma confirmed with the Town Planner that the site was in a floodplain, according to the FEMA maps. She said that it would be necessary to do the elevation of it outside the floodplain. Ms. Edgecomb stated that they would have to have a surveyor mark whether it was above or below the floodplain, as it had

not been stated on the survey that had been done. The Town Planner said that, if it was found to be in the floodplain, the Code Enforcement Officer would advise them how to proceed with the construction.

The Chair then addressed the sections of the Shoreland Zoning Ordinance that applied, according to the Town Planner's memo dated December 8, 2009.

§10.3.1.2.1 The standards of this section were met.

§10.3.1.2.2 The standards of this section were met.

§10.3.1.2.3 The Code Enforcement Officer had stated that the house could not be moved back.

Mr. Papacosma moved that the application be approved with the standard conditions of approval, on the condition that a determination was made as to whether the building was in a floodplain; if so, the requirements of the Ordinance must be met, specifically, that the building must be one foot higher than the floodplain. The motion was seconded; there was no further discussion. The Board voted unanimously to approve the project.

**09-02-01 Black Diamond Consultants, Inc. (Applicant), Tower Specialists, Inc. (Leaseholder),
Site Plan Review, Tax Map 42 Lot 70, Community Drive, Harpswell**

Mr. Papacosma made the statement, for the record, that he had retired from AT&T in 1994, where he was employed in manufacturing.

Chad Hebert, of Black Diamond Consultants who represented US Cellular, addressed the Board. He explained that US Cellular was proposing to install an antenna array on the recently approved Town of Harpswell cell tower, and also to build a 20x12 equipment shelter to house their radio transmission equipment. He distributed a revised set of drawings to the Board members. [These drawings may be found in the Planning Office files.]

Mr. Hebert referred to the Town Planner memorandum's Findings of Fact, and addressed questions with relation to the Wireless Telecommunications Facilities Ordinance:

§7.2.2.10 Surety Approval - a removal bond for the shelter, foundation and antennas. The Town Planner said that the surety bond was acceptable; it would be for US Cellular's specific equipment.

§8.2.2.3 Adequate Liability Insurance – Mr. Hebert said he would provide a certificate of insurance from US Cellular.

§8.2.8.1 Security Lighting – Mr. Hebert said that the only lighting that US Cellular would propose would be the single light on the outside of the equipment building that would be turned on by a technician and would go off automatically after 30 minutes. He showed the Board a picture of a light with a "down tilt", which would shine at a maximum of 20 feet, and would also have a shield. [Mr. Hebert provided the Town Planner copies of information for the file.]

§8.2.9 Building Façade – Mr. Hebert referred the Board to their handouts, and confirmed that the exterior of the equipment shed would be "pebble stone".

§15.10 Erosion Control – Mr. Hebert referred the Board to the last page of their set of drawings. He stated that US Cellular used "best management practices" in their construction, utilizing silt fences and hay bales as necessary, but it was mostly left up to the contractor.

Mr. Papacosma asked if there would be a generator installed on site; Mr. Hebert said that one was not planned at this time. He said there would be a pad built, and there might be a generator installed later. The Board made Mr. Hebert aware of the fact that power outages in Harpswell are fairly common, and he said that there would be a bank of backup batteries installed that would run the equipment for approximately 10 hours. He also said that, for longer term power outages, it was usual to bring a portable generator to the site.

The Chair asked if there were further questions from the Board; there was none. She asked for comments from the audience, and Ned Simmons from Great Island addressed the Board. He stated that he was the closest abutter and said that, in his opinion, the tower as approved was non-conforming as to height.

The Board wanted to know what the exterior of the second applicant's proposed building would look like, and Bob Gashlin, who represented AT&T, addressed the Board. He told the Board that, during his presentation, he would refer them to his submitted materials which included an aerial photograph of the site. The photo would demonstrate that the site was located in a forested area, and the exterior of the building would be "mitigated". He also stated that AT&T was proposing the same kind of exterior on their building, and described it as an "earth toned pebble finish".

The Chair stated that all other conditions stated in the Town Planner's memo had either been met, or did not apply, with the exception of the Five Conditions of Approval cited.

Mr. Papacosma made a motion to approve the application with the following to be submitted to the Town Planner and/or the Town Attorney for review and approval: form of surety (Town Attorney), building façade (Town Planner), proof of liability insurance (Town Planner), information which showed the proposed lighting and met the ordinance requirements and which had been submitted to the Board, and erosion control measures (Town Planner) which also had been submitted to the Board. The motion was seconded, and the Board voted to unanimously approve the project.

**09-02-02 KJK Wireless (Applicant), Tower Specialists, Inc. (Leaseholder), Site Plan Review
Tax Map 42 Lot 70, Community Drive, Harpswell**

Bob Gashlin of KJK Wireless, addressed the Board. Mr. Gashlin represented AT&T Mobility, and told the Board that the legal name of the entity was New Cingular Wireless PCS, LLC, better known as AT&T Mobility ("AT&T"). He said their application was similar to US Cellular's, and they would be asking approval for an equipment shelter, a generator, some utilities and installation of the fenced-in compound for the facility.

Mr. Gashlin first addressed the site plan in his presentation. [A copy of the presentation can be found in the Planning Office files.] He mentioned the memo from the Code Enforcement Officer, William Wells, that was in the Board's materials and which stated that Mr. Wells found the application to be in compliance with the applicable Ordinance(s). [A copy of this letter can be found in the Planning Office files].

Mr. Gashlin explained Page A02, the "Site and Grading Plan" to the Board that addressed the erosion control plan and the seeding and revegetation plan. He stated that the Town Planner found those issues to be in compliance with the Ordinance.

Page A01, the "Abutter's Plan", was a site plan of the entire parcel that showed the facility to be situated 565 ft. from Strawberry Creek, nearly 596 ft. from the main road. It was also 1181 ft. from the northern boundary and 1918 ft. from the eastern boundary; the location was well hidden, with a buffer of about 145 ft. from Community Drive that was mature trees. He referred to the aerial photograph of the site he gave to the Board members earlier. [A copy can be found in the Planning Office files.]

Page 4, the "Site and Grading Plan", was a detail of the site that showed the previously approved road that would lead to the 75 ft. x 75 ft. compound situated within a 100 ft. x 100 ft. enclosure. The plan also showed staked hay bales, part of their erosion and sediment control plan.

Page A03 was the detailed site plan and elevation of the tower that showed where the various carriers would be positioned on the tower. Mr. Gashlin explained the detailed drawing of the compound that included the proposed meter bank location for utilities, telephone equipment and transformer, all located outside the compound. He described the equipment shelter as being 12 ft. wide x 20 ft. long, earth toned pebble finish; probably the same as US Cellular had proposed. He also pointed out the location of a proposed diesel powered generator that would be placed on a 4 ft. x 11 ft. concrete pad.

The next drawing was of "Construction Details I" that addressed underground utilities. "Construction Details II" showed drawings of the proposed 6 ft. high fence topped with barbed wire for security purposes. The drawing also showed detail of the silt fence/hay bale barrier.

Drawing C03, "Foundation Details and Antenna B.O.M.", explained details of the proposed foundations used for the equipment. He reiterated that the Code Enforcement Officer had approved the project details as having met the criteria of the Ordinance.

The Town Planner explained that the Code Enforcement Officer had only approved the setbacks with relation to the project, not the building codes as yet, and suggested Mr. Gashlin confirm that. She said that, when she asked Mr. Wells to do a review, her focus was on the Telecommunications Ordinance, the Site Plan Review Ordinance, and the Basic Land Use Ordinance, not necessarily the building codes. Mr. Gashlin said he would "touch base" with Mr. Wells.

Mr. Gashlin addressed page C04 that addressed mounting details, etc. and said it was not part of the application to the Planning Board.

With page C05 "Shelter Details", Mr. Gashlin brought the Board's attention to the "Notes" in the bottom left of the drawing, which specifically addressed the lighting details and the exterior finish of the equipment shelter. Mr. Papacosma asked why the "Exterior Elevation Wall" drawing showed two lights, when Note 1 stated there would only be one 100 Watt light bulb. Mr. Gashlin said that the drawing was incorrect. He also explained that the light would go off when the technician opened the door, and you would have to be inside the compound in order to trip the light. The Town Planner asked if squirrels were known to trip motion detector lights. There was discussion which concluded that it was possible, but very unlikely. Mr. Gashlin reiterated that, due to the remote location, it would not bother any neighbors if it did get tripped. Mr. Brooks asked, once a motion detector light was tripped, if it would stay on until someone turned it off, or would it go off automatically. Mr. Gashlin responded that he thought it would go off automatically after a certain period of time. He also reiterated that the "Notes" on Page C05 was AT&T's proposal.

Mr. Gashlin chose not to address the rest of the Site Plan's construction drawings with the Board unless there were further questions. [There were three drawings not addressed: "Electrical Riser Diagram" (Dwg. E01), "Schematic Grounding Plan" (Dwg. E02), and "Grounding Details" (Dwg. E03).]

Ms. Levensailor addressed the 800 amps electrical service, and Mr. Gashlin stated that was what was proposed, and mentioned that Paul Strout, President of TSI, was in the audience. For the information of the viewing public, she said there were proposed protection measures that would be implemented. Mr. Gashlin stated that the electrical service "met all specification standards and all codes".

Mr. Gashlin addressed the Town Planner's memo, and the "Site Plan Review - Findings of Fact".

§15.1 Dimensional Requirements. Mr. Gashlin said that, as previously discussed, he hoped the memo from the Code Enforcement Officer had addressed that issue.

§15.15 Lighting. There had been an error in the Town Planner's memo. It should have stated "...the standards of this section have been met."

§15.21 Technical and Financial Capacity. Mr. Gashlin read additional material to the Board that had been taken from AT&T's website on January 28, 2009 regarding the fourth quarter and year end 2008 financial information, and submitted it for the record as proof that the company had the capacity to do the project.

Mr. Gashlin addressed the "Standard Conditions of Approval" of the Town Planner's memo. He thought the section was directed mainly to the tower owner (TSI), because AT&T was a sub-tenant and "didn't have any say in those issues".

He questioned number 7 of the Town Planner's memo that addressed §15.16 of the Shoreland Zoning Ordinance. The Town Planner explained that section of the Ordinance did apply because it dealt with erosion control measures, which had been addressed by AT&T in their proposed plans. She said it had been "referred to", instead of being rewritten in every ordinance.

Mr. Gashlin addressed the issue of the removal bond, and briefly explained the procedure and equipment necessary to remove AT&T's equipment from the site. He said that \$10,000 was a figure that other planning boards typically accepted. He said the real cost would be removal of the facility itself, not the colocator's equipment. Mr. Gashlin asked the Board if \$10,000 would be an acceptable figure; the Town Planner asked for clarification regarding what that estimate would include. Mr. Gashlin said the only items that AT&T would remove would be their above ground items: the equipment shelter, the generator, the cables that go up the tower, and the antennas on the tower.

Mr. Papacosma wanted clarification regarding specifics of the tower removal – "who does what". Mr. Strout of TSI addressed the Board, and explained that it was a "cost sharing arrangement" among AT&T, US Cellular and TSI; that, jointly, they were putting in the site. Mr. Papacosma asked how many colocators could fit in the compound, and Mr. Strout said a total of four would fit. Each company is responsible for their own portion. Mr. Strout said his understanding of his agreement with the Town stated that TSI was responsible for removal of the tower, the road and any graveled space (the 100 ft. x 100 ft. area). His agreement with the Town was for 20 years.

The Town Planner said that both AT&T and US Cellular would have to submit to the Planning Board a list of items to be removed and the cost of each item, just as TSI had done. They also had to submit a form of surety to be approved by the Planning Board, as well as be reviewed by the Town attorney.

Mr. Gashlin reiterated the equipment AT&T would be responsible for removing. The Town Planner asked who would be responsible for removing the fence and foundation(s); these things were not built into any agreement, at present. She said the current agreement stated that everything would be removed and the area would be put back to it's previous condition. Ms. Levensailor asked if those things wanted to be retained by the Town in the future, could the agreement be amended? The Town Planner said "probably"; the current agreement provided assurance that the equipment would be removed.

Mr. Gashlin clarified that AT&T would be responsible for the 4 ft. x 11 ft. pad and the 12 ft. x 20 ft. pad; he could include them on the list for AT&T to remove. Mr. Strout stated that "as long as the tower is useful" was

the wording of the agreement, and the agreement did not say that everything would be removed. It said that TSI would provide the surety as well as the colocators, and the Town would have the option to keep the facility. The Town Planner said that the fencing should specifically be added to the side agreement because it had not been addressed in any agreement, so far. She suggested the fence issue should be decided at the current meeting. Mr. Gashlin stated that AT&T could not be liable for removal of the fence, in case they left before the facility's use was finished. The Town Planner reiterated that someone had to be the responsible party with regard to the fencing issue.

Mr. Papacosma revisited the subject of the amount of the surety bond. Mr. Gashlin stated that the example figure of \$20,000 he mentioned previously was for the removal of an entire facility, whereas the \$10,000 amount was only for AT&T's removal of the four things he spoke of earlier – cables, building, generator and antennas, and also two pads. He said AT&T was not in a position to be liable for the fence.

The Town Planner explained that, after their application, TSI had submitted a list of items to be removed with a cost estimate and a form of surety (their letter of credit), and the Planning Board had considered and approved it with authorization from the Town Attorney. She suggested that the fencing decision be tabled based on further information to be provided.

The Chair asked Mr. Gashlin to address the waivers listed on the first page of the Town Planner's memo.

Mr. Gashlin revisited the issue of the bond, and offered \$15,000. He estimated certain equipment costs as examples for that.

Waivers Requested:

- Boundary Survey – Mr. Gashlin stated that one had been submitted and there was a stamped copy in the files, and he referred the Board to page 3 of the AT&T Site Plan and said that it was a copy of the survey without the surveyor's stamp.
- Landscaping Plan – Mr. Gashlin said the documentation submitted with the Site Plan, including aerial photographs, showed the tower location "in the middle of the woods".
- Photo Simulation – Mr. Gashlin said no one would see it because of the mature trees and vegetation that would remain.
- Historic Places – Mr. Gashlin stated that TSI had done a study regarding the issue and documentation could be found in the Planning Office files.

The Chair asked if there were any questions regarding the waivers; there were none. She asked if there were any further questions for the Applicant; there were none.

Ms. Levensailor commended the Applicant for submitting a complete, concise application.

Mr. Simmons asked for clarification regarding the site plan review; it seemed to him that the tower was being considered under the tower ordinance. The Town Planner said that it was because of the collocation aspect, but that most of the questions had already been answered by the TSI application which had previously been approved by the Planning Board. Mr. Simmons was of the impression that the Code Enforcement Officer could have issued a permit for expansion.

The Chair asked the Board if they would accept the façade as presented, and they agreed.

The Chair asked the Board if they were willing to accept the forms of technical and financial capacity as discussed; the Town Planner said that sufficient information had been provided.

Mr. Papacosma moved to approve the waivers as requested. They are from the following sections of the Wireless Telecommunications Facilities Ordinance:

- §7.2.2.4.3 – Boundary Survey
- §7.2.2.5.2 – Landscaping Plan
- §7.2.2.5.3 – Photo Simulation
- §7.2.2.8 – Historic Places

The Board voted unanimously to approve the requested waivers.

Mr. Papacosma made the motion to approve the application with the following to be submitted to the Town Planner and/or the Town Attorney for review and approval:

- Form of Surety in the amount of \$15,000, minimum (Town Attorney)
- Building Façade (Town Planner)
- Technical and Financial Capacity (Town Planner)

The Chair asked for further questions or comments; there were none. The Board voted unanimously to approve the application.

OTHER BOARD BUSINESS

Consideration of Planning Board exercise of jurisdiction over applications(s) pursuant to Site Plan Review Ordinance §16.4 and/or Shoreland Zoning Ordinance §10.3.2.3.

There were no jurisdictional issues to discuss.

Town Planner's Updates

There were no updates from the Town Planner.

A motion was made to adjourn, which was seconded.

The meeting adjourned at 8:15 PM.

Respectfully Submitted,

Melissa Moretti
Recording Secretary